

## Exhibit D

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE NO. 2014CA11945 AG

SEARS, ROEBUCK AND CO.,  
a New York corporation,

Plaintiff,

v.

FORBES/COHEN FLORIDA PROPERTIES, L.P.,  
a Michigan limited partnership,

Defendants.

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PROCEEDINGS BEFORE THE HONORABLE EDWARD A. GARRISON  
VOLUME 4

Tuesday, May 17, 2016  
2:07 - 5:36 p.m.

Palm Beach County Courthouse  
201 North Dixie Highway, Courtroom 9B  
West Palm Beach, Florida 33401

Reported By:  
Rachel W. Bridge, RMR, CRR  
Notary Public, State of Florida

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1 admonition from Judge Hafele, and that admonition  
2 they received from Judge Hafele is also quoted in  
3 our trial brief, and I'm not going to go through  
4 all the law that's in our trial brief, Your Honor,  
5 because I can tell from the beginning or at least  
6 it's my impression from the beginning that this  
7 court has read the material and was ready, so I'm  
8 not going to belabor the cases and what-have-you.  
9 They are there. I invite your attention.

10 But the admonition they received, when he  
11 denied their motion for summary judgment, said in  
12 part "This simple statement here of Dick's being a  
13 retailer and fitting under the contract is not  
14 simple at all, because what comes with the  
15 trappings of signage, square footage, following the  
16 ordinances that have existed for a long time, it  
17 takes more than just fitting under the  
18 definition"-- he was referring to retail -- "to  
19 create the court making a ruling as a matter of law  
20 that somehow Sears has a right to sublease to  
21 Dick's that fits this definition."

22 In fact, continuing on their fantasy trip,  
23 Dick's has said -- Sears has said to you we don't  
24 want you to look at the sublease. Don't be  
25 concerned with the sublease.

1 C E R T I F I C A T E

2

3 STATE OF FLORIDA

4 COUNTY OF PALM BEACH

5

6

7 I, Rachel W. Bridge, Certified Realtime  
8 Reporter, State of Florida at large, certify that I was  
9 authorized to and did stenographically report the  
10 foregoing proceedings and that the transcript is a true  
11 and complete record of my stenographic notes.

12 Dated this 22nd day of May, 2016.

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Rachel W. Bridge, RMR, CRR  
Court Reporter

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1 IN THE FIFTEENTH JUDICIAL CIRCUIT COURT  
2 IN AND FOR PALM BEACH COUNTY, FLORIDA  
3 CIVIL DIVISION  
4 CASE NO: 2014CA011945AG

5 SEARS, ROEBUCK AND CO., a New  
6 York corporation,

7 Plaintiff,

8 V

9 FORBES/COHEN FLORIDA PROPERTIES,  
10 L.P., a Michigan limited  
11 partnership,

12 Defendant.

/

13 Proceedings before the Honorable  
14 DONALD W. HAFELE  
15 (Proceedings already in progress)

16  
17  
18 Monday, November 16, 2015  
19 205 North Dixie Highway  
20 Palm Beach County Courthouse  
21 West Palm Beach, Florida 33401  
22 1:59 - 2:30 p.m.

23  
24 Reported by:  
25 Lisa Mudrick, RPR, FPR  
Notary Public, State of Florida

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BY: R. MAX LOHMAN, ESQUIRE

1 P R O C E E D I N G S

2 - - -

3 BE IT REMEMBERED that the following  
4 proceedings were had in the above-styled and  
5 numbered cause in the Palm Beach County Courthouse,  
6 City of West Palm Beach, County of Palm Beach, in  
7 the State of Florida, by Lisa Mudrick, RPR, FPR,  
8 before the Honorable DONALD W. HAFELE, Judge in the  
9 above-named Court, on November 16, 2015, to wit:

10 - - -

11 (Proceedings already in progress)

12 - - -

13 MR. CARSON: Going on to Tab 2, there is  
14 only one agreement between Dick's and Sears.  
15 That's what's been testified to. That's what's  
16 before the Court. That is the entire  
17 agreement. So any representation which is an  
18 argument of counsel that says, oh, don't worry  
19 about this, we'll address this later, there is  
20 no later. This is the deal. There is no  
21 agreement to make modifications.

22 In fact, as you will see later on, the  
23 testimony from Dick's is they wanted Sears to  
24 give comfort that everything can be attained,  
25 everything in here which is necessary can be

1 premises.

2 And what I mean by that is the simple  
3 statement here of Dick's being a retailer and  
4 fitting under the contract is not simple at  
14:27:06 5 all. Because with that come the trappings of  
6 signage, square footage, following ordinances  
7 that have existed for a long time. And, yeah,  
8 that resolution in 2012 may or may not stand.

9 But all of these things here require more  
14:27:33 10 than just a declaration of this very simple  
11 limited language. Because it's just not that  
12 terminology that makes Dick's a permitted user  
13 or fits under the definition set forth in the  
14 contract. It's all of these other things  
14:28:03 15 similar to this hot dog vendor, where that hot  
16 dog vendor may need a separate license to sell  
17 food, may have to follow certain sanitary  
18 requirements required by the city or by the  
19 county.

14:28:25 20 And it would essentially -- again, I am  
21 not trying to minimize this or make this too  
22 simplistic or facetious. It's just an example  
23 that came to mind. That it takes more than  
24 just fitting under a definition to create the  
14:28:48 25 Court making a ruling as a matter of law that

1 somehow Sears has this right to sublease  
2 because Dick's fits under this definition. The  
3 definition at this stage of the proceeding is  
4 simply not enough.

14:29:03 5 Therefore, the motion is respectfully  
6 denied. And again, with my thanks to all for  
7 your participation, presentations, and  
8 submissions.

9 MR. CARSON: Thank you, Your Honor.

14:29:13 10 THE COURT: Have a great rest of the week.

11 Does anyone have a blank order that just  
12 simply says denied?

13 MR. RICHMAN: We have one, Your Honor,  
14 that says granted or denied.

14:29:25 15 THE COURT: Okay. That would be fine.  
16 Thank you, Mr. Richman. And I will need  
17 envelopes, please.

18 MR. CARSON: Thank you for the time, Your  
19 Honor.

14:29:33 20 THE COURT: Thank you all very much,  
21 again, for your presentations.

22 MR. LOHMAN: Excuse me, Your Honor, may I  
23 approach?

24 THE COURT: Yes.

14:29:52 25 MR. LOHMAN: I just want to make sure they

C E R T I F I C A T E

- - -

The State of Florida

County of Palm Beach

I, Lisa Mudrick, RPR, FPR, certify that I  
was authorized to and did stenographically report  
the foregoing proceedings (already in progress),  
pages 1 through 28, and that the transcript is a  
true record.

Dated November 18, 2015.



LISA MUDRICK, RPR, FPR  
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